

Claimant alleges that she suffered a cervical injury in the course of her employment on August 2, 1995 when she attempted to catch a patient as the patient dropped to the floor. Claimant has a history of preexisting problems in the cervical and shoulder region. Claimant had gone to Dr. James A. Barnett on July 26, 1995, a few days before the alleged accident, and he had placed her in physical therapy. Notes from physical therapy from July 31, 1995, two days before the alleged injury, show the following history of complaints:

"A couple of mos. ago this pt. incideous onset of pain described at the base of her neck & into the L sho. The past couple of days the pain has moved over to the R sho blade region. On occasion she has had pain to either distal sho and as far down as the fingertips of both hands. Over the past couple of wks, the intensity has also inc. Driving as well as lying down on her back seem to aggravate her condition, as well as, transferring pts. at work."

Claimant testified that on August 2, 1995 she felt a pulling sensation while assisting a patient who dropped to the floor. She testified that the next morning she had sharp pain in her shoulders and neck. She did not, herself, attribute this pain to the incident the day before. She did not relate her neck pain to anything at work for three or four days.

Dr. Barnett had, in addition to physical therapy, recommended an MRI and referred claimant to Dr. Yorke. The MRI performed on August 12, 1995 showed a herniated disc at C6-7. Claimant saw Dr. York on September 26, 1995 and the letter report that he sent back to Dr. Barnett mentions an onset of pain in the left shoulder in July 1995 which had been made worse through physical therapy. The report contains no reference to an on-the-job injury. The record made at the preliminary hearing, in fact, contains no expert opinion which ties claimant's cervical injury to her work activities or the episode on August 2, 1995. Under these circumstances, the Appeals Board agrees with the conclusion that the record fails to meet claimant's burden of establishing she suffered an accidental injury arising out of and in the course of her employment with respondent.

The record also indicates claimant did not give notice within ten days. She did not return to work after August 2, 1995 and testified that she connected the injury to her work activities approximately four days later. Although claimant testified that she did contact her employer each scheduled work day and advised her supervisor she was having a problem with her neck and/or shoulder, she did not relate this to work and did not give notice of a work-related injury until August 21, 1995, clearly more than ten days beyond the alleged date of accident of August 2, 1995.

The Appeals Board also agrees with the conclusion that claimant has not established just cause for the failure to give notice. She does testify that she did not give notice of a work-related injury because she thought it would go away with time. By her own testimony she considered the injury work related as of August 6, 1995. Not until the MRI revealed a herniated disc did she feel she should give notice of a work-related injury. A good-faith belief that a minor injury was not significant may, in some contexts, be a factor in establishing just cause. The circumstances presented here do not warrant such finding. The injury was serious enough to render claimant unable to continue to work. She testifies that she knew of her obligation to notify the employer immediately of injuries at work. Under these circumstances, claimant does not meet her burden to show just cause and the decision should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated April 24, 1996 should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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**BOARD MEMBER**

c: Michael G. Patton, Emporia, KS  
Steven J. Quinn, Kansas City, Mo  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director